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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 929/2013**

STATE NCT OF DELHI

.....Appellant

Through: Mr Ritesh Kumar Bahri APP with Mr
Lalit Luthra Adv.

Insp Varun Dalal and SI Loveleen

versus

KULDEEP & ANR.

.....Respondents

Through: Mr. Sagar Saxena, Mr. Krishnandu
Halдар, Mr. Abu Hassan Usmani,
Adv.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

ORDER

% **13.02.2026**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the State assailing the judgement dated 26th February, 2013 passed by Id. Additional Sessions Judge-01, West, Tis Hazari Courts, Delhi (*hereinafter*, 'the impugned judgment') where by the Respondents/accused (*hereinafter*, 'accused') have been acquitted by the Trial Court for offences punishable under Sections 363/34, 376(2)(g) and 506 II/34 of the Indian Penal Code, 1860 (*hereinafter*, 'IPC') in **Sessions Case No. 109/2010**.

Factual Background

3. The brief case of the prosecution is that sometime in March-April, 2010 the accused persons *i.e.*, Kuldeep and Ashok had allegedly kidnapped the Prosecutrix and had raped her. They had taken her in their car to a nearby



place in the Punjabi Bagh area.

4. It is the further case of the prosecution that the accused had extended threats to the life of the Prosecutrix as well as her parents.

5. According to the statement of the Prosecutrix under Section 164 of the Cr.P.C, she knew both the accused persons who were living in the neighbourhood. It was also stated that at the time of the incident, she was studying in 8th Standard, however, she could not tell her date of birth. It is also stated that the family of the Prosecutrix belongs to District Basti, Uttar Pradesh.

6. Further, it is also stated that she had felt some pain in her stomach and her mother took her to the nearby hospital where she was admitted on 8th August, 2010 and it was revealed that she was pregnant.

7. The ***FIR No. 253/2010*** was registered at P.S. Moti Nagar, Delhi under Sections 363/376/376(2)(f)/376(2)(g)/506 (Part II)/34 of the IPC. Thereafter, investigation was carried out and charges were framed against the accused *vide* order on charge dated 1st March, 2011.

Proceedings before the Trial Court

8. In order to prove the charges against the accused, statements of 20 witnesses were recorded. The statements of the accused persons under Section 313 of the Cr.P.C. were also recorded.

9. During the cross-examination, PW-1 the Prosecutrix, PW-2- mother of the Prosecutrix, PW-3-father of the Prosecutrix did not support the case of the prosecution that the accused persons had raped her.

10. ***Ex. PW 16 G*** *i.e.*, Forensic Science Laboratory (*hereinafter*, '*FSL*') report had revealed that the DNA of the foetus was examined and the same had matched with the DNA of one of the accused persons *i.e.*, Kuldeep. Thus,



the case of the prosecution was that the Prosecutrix was a minor at the time when the alleged incident took place.

11. After the evidence was recorded and arguments were heard, the Trial Court acquitted the accused persons *vide* impugned judgement dated 26th February, 2013.

12. However, the Trial Court acquitted the Respondents on the ground that there was no consistency in the age which was stated by the Prosecutrix, PW-2 -mother of the Prosecutrix and PW-3- father of the prosecutrix.

Findings of the Trial Court:

13. *Vide* the impugned judgement, the Trial Court came to the following conclusions:

- (i) The age of the Prosecutrix was 19 years at the time when the alleged incident took place. The prosecution has not been able to prove that she was a minor.
- (ii) The Prosecutrix, PW-2 and PW-3 had not supported the case of the prosecution.
- (iii) Though as per *Ex. PW 16 G i.e.*, FSL had concluded that the accused Kuldeep was the biological father of the foetus, however, the Prosecutrix did not mention in her statement that Kuldeep committed rape on her.

14. In this regard, the findings of the Trial Court are set out below :

“7 . As per the case of the prosecution, the age of the prosecutrix was 14 years at the time of incident. Pw1, the prosecutrix has been examined on 20.08.11 and she has testified her age as 20 years. She has denied the suggestion of the Ld. APP that she was 14 years of age at the time of alleged incident. Pw2, the mother of the prosecutrix who has been examined on 20.08.11, has



deposed that the age of the prosecutrix as 18 to 20 years. Pw3, the father of the prosecutrix who has also been examined on 20.08.11, has deposed that the prosecutrix is 20 years of age now.

In the school record, the date of birth of the prosecutrix is mentioned as 07.07.96. PW5 had deposed that parents of the prosecutrix has not submitted any affidavit regarding the date of birth of the prosecutrix. Pw3 had deposed that she has given wrong date of birth of the prosecutrix in school. PW1 had deposed that she do not know if she was born on 07.07.96.

Keeping in view the facts that no birth certificate has been proved on record and that PW3 has given the wrong date of birth of the prosecutrix in the school, the prosecution has failed to prove that the date of birth of the prosecutrix as mentioned in the school record is her correct date of birth.

The alleged incident is alleged to be happened during the month of March and April 2010. From the oral testimonies of PW1, PW2 and PW3, it is proved that the age of the prosecutrix was about 19 years on the date of alleged incident.

8. As per the case of the prosecution, both the accused persons in furtherance of their common intention had kidnapped the prosecutrix and had committed rape upon her and had also threatened her with threat to her life and to the life of her parents.

PW1, the prosecutrix is the material witness to prove the case of the prosecution. PW1 has not supported the case of prosecution and she has turned hostile. PW1 has also been cross-examined by the Ld. APP but from the cross-examination, no such evidence has been come on record which would support the case of the prosecution. PW2



and PW3 are the mother and father of the prosecutrix respectively and have also not supported the case of the prosecution.

In the DNA report Ex.PW16/G, it has been concluded that the accused Kuldeep was the biological father of the foetus. Id. App has argued that this DNA report proved that the accused Kuldeep had committed rape upon the prosecutrix. As discussed above, the age of the prosecutrix was 19 years at the time of alleged incident. In her testimony, the prosecutrix has nowhere stated that the accused Kuldeep has committed rape on her. In my view, the DNA report Ex.PW 16/G does not in any way proves that the accused Kuldeep has committed rape upon the prosecutrix.

9. In view of the above discussions, the prosecution has failed to prove its case against the accused persons. Accordingly, accused persons are acquitted for the offences punishable U/s 363/34 IPC and , 376(2)(q) IPC and 506(Part II)/34 IPC. Their bail bonds are cancelled. Their sureties are discharged. “

15. Thus, based on the aforesaid findings, the Trial Court had acquitted the accused persons.

Proceedings before this Court

16. Initially, on 24th July, 2013, the matter was listed as **CRL.L.P. 342/2013**. The Court had allowed the leave to appeal on behalf of the state and had directed the appeal to be numbered. Thereafter, the matter was to be listed in due course.

17. Today, Mr. Ritesh Kumar Bahri, Id. APP has vehemently argued that the **Ex.PW 16/G-** the FSL report completely supported the case of the prosecution. However, the Trial Court had not discussed the same presuming



that the girl is a major and therefore, there is no proof that accused person Kuldeep had in fact raped her.

18. Further, Id. APP has also placed reliance upon the school register of the Prosecutrix which shows that the date of birth of the Prosecutrix is 7th July, 1996. However, it is submitted that the Trial Court has proceeded on the basis that there was no birth certificate and that the parents of the Prosecutrix did not support the date of birth which was given in the school register.

19. On the other hand, Id. Counsel for the Respondents submits that the entire evidence has been considered by the Trial Court, therefore the impugned judgment deserves to be upheld. Further PW-19 who proved the FSL report was not cross examined in the trial court, so the evidence is un rebutted.

Analysis and Findings

20. This Court has considered the matter and perused the records. The fact that there is a school register which clearly records the date of birth of the Prosecutrix as 7th July, 1996 ought to have been taken into consideration by the Trial court.

21. Additionally, from the statements of the Prosecutrix as also of PW-2 and PW-3, it appears that there is some influencing of the witnesses, which may have occurred. Thus the trial court ought to have also considered the forensic and independent evidence rather than merely going by the statements of the Prosecutrix and her family.

22. The fact that the FSL report reveals that the DNA of the foetus matched with the accused person Kuldeep is a significant fact which could not have been ignored by the Trial Court. Further, if the Prosecutrix was a minor, consent would be irrelevant.



23. Thus, there were significant facts which could not have been ignored by the Trial Court. The date of birth in the school register, the inconsistency in the Section 164 statement of the Prosecutrix and the statement given in Court ought to have been examined by the Trial Court in a detailed manner. The Trial Court ought to have examined the possibility of influencing the witnesses who had turned hostile.

24. In the light of the date of birth in the school register, as also the FSL evidence, the matter required a deeper scrutiny which was not done by the Trial Court.

25. Under these circumstances, this Court is of the opinion that this is a fit case for remand and for fresh adjudication by the Trial Court.

26. Accordingly, the impugned judgment is set aside on the basis of the existing evidence itself.

27. The Trial Court shall hear fresh arguments and submissions and re-adjudicate the matter again, without being influenced by the earlier judgment, which has been impugned before this Court.

28. At this stage, Id. Counsel for the Respondents submits that since there has been no cross examination of PW-19 *i.e.*, Mrs. Shashi Bala, Sr. Scientific Officer (Biology), FSL, Rohini, Delhi the accused persons may be permitted to cross examine the said witness.

29. The said prayer may be made before the Trial Court and cross-examination shall be permitted, upon request by the accused persons.

30. The accused shall appear before the Trial Court and they shall be released on bail, subject to reasonable conditions during the pendency of the adjudication before the Trial Court.

31. The matter be listed on 11th March, 2026 before the Trial Court. The



accused shall appear before the District and Sessions Judge, West District, Tis Hazari Courts, Delhi on the said date and the matter shall be marked to the appropriate court for further proceedings.

32. The present appeal is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

MADHU JAIN, J.

FEBRUARY 13, 2026/prg/sm